

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 3:11-CR-25
	)	PHILLIPS/SHIRLEY
DAVID MINER	)	

**MOTION TO DISMISS COUNTS TWO AND THREE**

Comes the defendant, David Miner, and moves this Honorable Court for an Order dismissing Counts Two and Three of the first indictment presented in Court. These counts both attempt to charge a violation of 26 U.S.C. § 7203, a failure to file a tax return. This statute is simply a punishment statute and does not define the offense of failing to file a tax return. These two counts violate the Fifth and Sixth Amendment to the United States Constitution and must be dismissed as they are simply not sufficient to comply with the Constitution.

Respectfully submitted this the 8th day of August, 2011.

FEDERAL DEFENDER SERVICES OF  
EASTERN TENNESSEE, INC.

By: s/Kim A. Tollison  
Kim A. Tollison  
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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the court's electronic filing system.

s/Kim A. Tollison  
Kim A. Tollison